

Message Text

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ACTION EA-12

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-08 FRB-03
INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03
SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-07
CEA-01 JUSE-00 PA-01 L-03 /095 W
-----057826 101022Z /14

R 100746Z MAY 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC 5527
INFO AMEMBASSY BANGKOK
AMCONSUL HONG KONG
AMEMBASSY JAKARTA
AMEMBASSY KUALA LUMPUR
AMEMBASSY SEOUL
AMEMBASSY SINGAPORE
AMEMBASSY TAIPEI

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E.O. 11652: N/A
TAGS: EINV, RP
SUBJECT: PRESIDENTIAL DECREE WIPES OUT TAX-FREE IMPORTATIONS

1. SUMMARY. TWO WEEKS AFTER PD 1352 SURFACED IN THE PRESS, THERE IS STILL CONSIDERABLE CONFUSION OVER WHAT IT MEANS AND HOW IT WILL BE APPLIED. PD 1352 WIPES OUT TAX-FREE IMPORTATIONS BY A LARGE NUMBER OF PARTIES, MOST IMPORTANT OF WHICH ARE FOREIGN AND DOMESTIC INVESTORS REGISTERED WITH THE BOARD OF INVESTMENTS AND REGIONAL OR AREA HEADQUARTERS OF MULTINATIONALS. GOP OFFICIALS CONCERNED WITH INVESTMENT PROMOTION ARE DISTURBED OVER THE CHANGE OF RULES PERPETRATED BY THEIR COMPATRIOTS IN THE DEPARTMENT OF FINANCE. END SUMMARY.

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2. PRESIDENT MARCOS SIGNED APRIL 21, 1978 PRESIDENTIAL DECREE NO. 1352 WHICH PROVIDES THAT "ALL IMPORTATIONS WHICH ARE PRESENTLY EXEMPT FROM CUSTOMS DUTIES AND/OR INTERNAL REVENUE TAXES UNDER THE PROVISIONS OF ANY GENERAL OR SPECIAL LAWS SHALL BE SUBJECT TO A 5 PERCENT CUSTOMS DUTY AND 5 PERCENT INTERNAL REVENUE TAXES SUBJECT TO THE SAME LIMITATIONS AND CONDITIONS PRESCRIBED UNDER

SUCH LAW, IHREFX."

3. DECREE EXEMPTS 13 SPECIFIC GROUPS OR ENTITIES, MOST IMPORTANT BEING THOSE SUBJECT TO INTERNATIONAL TREATIES OR COMMITMENTS (I.E., DIPLOMATS, UN AGENCIES, AND U.S. MILITARY). IT WIPES OUT TAX-FREE IMPORTATIONS PROVIDED IN 14 OTHER PRESIDENTIAL DECREES AND 13 REPUBLIC ACTS. ALL FOREIGN INVESTORS REGISTERED UNDER RA 5186 WITH THE BOARD OF INVESTMENT AND ALL REGIONAL OR AREA HEADQUARTERS OF MULTINATIONALS UNDER PD 218 AND PD 348 WILL LOSE THEIR TAX-FREE IMPORTATION PRIVILEGES UNDER THE PROVISIONS OF PD 1352.

4. BOI OFFICIALS, INCLUDING CHAIRMAN PATERNO HIMSELF, HAVE NOT CONCEALED THEIR PUBLIC DISMAY OVER THIS DECREE. THEY CLAIM THEY WERE NOT CONSULTED AND PUBLICLY HAVE STATED THEIR CONCERN OVER THE EFFECT THE DECREE WOULD HAVE ON FUTURE FOREIGN INVESTMENT. PATERNO HAS TOLD THE PRESS THAT THE BOARD OF INVESTMENT WOULD FORMALLY COMMUNICATE WITH THE DEPARTMENT OF FINANCE TO SEEK EXEMPTION FROM PD 1352 FOR COMPANIES REGISTERED WITH THE BOI PRIOR TO APRIL 21, THE DATE THE DECREE WAS SIGNED AND MADE EFFECTIVE IMMEDIATELY. (ON MAY 8 HE TOLD EMBOFF THAT HE WAS SO DOING THIS WEEK). BOI HAS BEEN SUPPORTED BY SECURITIES AND EXCHANGE COMMISSIONER ANGEL LIMJOCO.

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5. WE HAVE NOW FINALLY OBTAINED A COPY OF PD 1352 WHICH IS BEING POUCHED TO EA/PHL. ALSO POUCHED IS A LONG ARTICLE IN MAY 3 ASIAN WALL STREET JOURNAL BY MIKE MALLOY WHICH GIVES ADDITIONAL DETAILS ON THE DECREE AND ITS POSSIBLE EFFECTS.

6. COMMENT. GOP HAS SHOT ITSELF IN THE FOOT IN THIS EXERCISE AND HARMED ITS INVESTMENT CLIMATE. DECREE WOULD DISCOURAGE NEW INVESTMENT, HARM SOME EXISTING ONES, AND PERHAPS CAUSE SOME MULTINATIONAL REGIONAL OFFICES TO MOVE TO SINGAPORE OR HONG KONG. THAT THE DECREE WAS SIGNED ATTESTS TO INFLUENCE OF SECRETARY VIRATA BUT ALSO TO INTENSE GOP SEARCH FOR REVENUE. TOUSSAINT

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